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PENOLOGY: ITS SOCIAL OBJECTIVE

*Herbert D. Laube**

Three years ago, a disheartened professor lamented that "In the United States, Penology is still a sort of text book subject," taught as a course in sociology in colleges and universities.¹ Since that time, three outstanding books have appeared from the press, which give persuasive evidence that penology is now passing from the stage of theoretical abstraction into the promising realm of reality. Duffy's *San Quentin Story*,² Wilson's *My Six Convicts* and Scudder's *Prisoners Are People*³ are three informing expositions which impress one that the problems of penology in some areas are no longer being resolved by the old out-moded punitive practices of the past.

Scudder, the Superintendent at Chino in California, has a novel tale to tell "of a prison without walls, without guns, without guards, where the dignity of the individual is recognized." The objective which has guided him and his staff, in their professional work, has this justification: Prisoners can be safely returned to society only if they are imbued with the dignity of honest work; only by acquiring an adequate vocational skill can they earn an honest livelihood.

If rehabilitation is the object of prison management, considerations of cooperation and fair play should become a spontaneous part of man's mental and emotional equipment. If ninety-eight per cent of those who go to prison are returned to society, what benefit can accrue to society by punishing prisoners for punishment's sake? Hope, not hate, will lure them into the path of their redemption. Scudder accepted the appointment of Warden of Chino in December, 1940, on one condition. The condition was that he would have a free hand in the selection and training of his staff. That conditional foresight precluded the vicious hazard of having political appointees thrust upon him, regardless of their pathetic disqualifications. In the past, the dominant, debasing source of prison management has been the prevailing policy in politics that supervisory prison positions are proper party spoils. If competent custodians can be found to adopt a humane prison discipline, Bernard

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¹ ENCYC. OF CRIMINOLOGY 300 (1949).

² Reviewed in 55 DICK. L. REV. 282 (1951).

³ Doubleday & Co., Garden City, 1952. Pp. 286. \$3.00.

Shaw says, the shocking revolts of a sadly neglected class, due to the vice of political control, would cease.⁴

In 1935, the California legislature inaugurated a prison policy of segregating the hopeful cases, which were capable of rehabilitation, from the hardened criminals. It was intended primarily for the benefit of the first offender. The site chosen for the experiment was a sugar beet ranch of 2600 acres, forty miles from Los Angeles. With buildings suitable for the purpose, it was transformed into a farm. The spirit which permeated the entire venture was the philosophy of freedom. As one member of the prison board declared, "Rehabilitation must come from within the individual and not through coercion". The basic defect of prison discipline has been that it required the individual, through force, to conform to an archaic system. Modern insight conceives of incarceration as punishment; the acute desire for freedom will always make it so. The failure or success of the men on parole is a question of their adjustment. The duty to make possible their ability to adjust themselves rests upon the administration. To escape or not to escape is probably the doubt each inmate has to resolve, at the delusive risk of further forfeiting his prospect of freedom.

To institute such a policy disqualifies all personnel candidates, whose faith embodies the strong-arm tactics. Psychologically, they disqualify themselves. Out of 2300 competitors, who sought positions on Chino's staff, only 700 passed the written examinations. They were set for the purpose of discovering their prior training, their insights and their resourcefulness. From these, fifty supervisors were selected. But those who had received the highest grades were interviewed before the selection was made. These aides were to function as supervisors without clubs or guns.

Of course political repercussions over the method of selection were instantaneous. So notable were they, even the previously sympathetic governor was displeased with the procedure. On the political list which came from Sacramento were fifty "worthy Democrats". Of the fifty, only five on the governor's list had made a sufficiently good grade to qualify for a Chino position. Since the condition of Scudder's acceptance as warden was that he was to select his own staff, the wrangle with the governor ended favorably to him. However the occasion was a stormy one. Of the fifty survivors who were chosen, twenty-nine had college degrees, four of whom also had master's degrees. Nine others had secondary teachers' credentials; eight others had two years of college training; the others were high school graduates. A training pro-

⁴ GEORGE BERNARD SHAW, *THE CRIME OF IMPRISONMENT* 64 (1946).

gram was given for the selected candidates; among the subjects, there was listed a two-hour course in judo.⁵ It was to be the only means of defensive security available to the supervisors in event of a protective disciplinary emergency.

Chino began its operations with thirty-four inmates selected from the multitude of men at San Quentin. Those were chosen who seemed best qualified for the opportunities which Chino offered. That required a careful examination of several hundred of its records. A Greyhound bus transferred these selected convicts to Chino, five hundred miles away. The trip was made with an escort of only three supervisors. They had no handcuffs or leg irons, no guns or billy clubs. Even the bus door was not locked. En route, the men took turns in talking to the Warden of Chino about their problems. These thirty-four offenders represented a diversity of criminal offenses; they ranged from assault and larceny to robbery, burglary and murder. They reached Chino at six o'clock in the evening, without any significant incident other than the enjoyment of recurring vistas, beautified by the scenic hills and towering mountains. On their arrival at Chino, they were greeted with "Welcome to Chino, men! You're just in time for supper." That greeting was a symbol of their potential regeneration through freedom and responsibility.

"Oldtimers predicted failure for the new institution and its strange philosophy that all prisoners could be treated as people while still in prison. It just couldn't be done." A potent secret of the success of Chino was that the supervisors were to work with inmates, instead of dominating over them. To create an apt atmosphere for the place, two legislative changes were made. The prison became the California Institution for Men and the Warden became its Superintendent. At the dedication of this new institution, 8,000 visitors were present. To them the Governor of California declared: "It is a noble advance in prison reformation, based on the real foundation of society, the brotherhood of man."

What were the qualifications of the men who were selected from San Quentin? They had to be of average intelligence, of good physical condition to enable them to work, with no previous escape or reformatory experience and with a good prison record. Each man, who was accepted, was interviewed. The hope which was stimulated by these interviews gave heartrending evidence of the joy which such an opportunity afforded. Yet a lifer refused to come unless he could bring his dog, "Snuffie". In each of the three following months an additional thirty-four men

⁵ SCUDDER, PRISONERS ARE PEOPLE 37 (1952).

were chosen for residents at Chino. At the end of six months, Chino had a group of 170 men.

According to Scudder, the regimentation of prison discipline seems designed to suppress an inmate's personality. Only friendliness and encouragement can stimulate confidence and self-respect. The conspicuous factor in supervision is the personality of the supervisor. Each inmate was entitled to see the daily ratings which he was given in his work, conduct and attitude. There was always an awareness that the ratings might be as much of a test of the supervisor as it was of the man. In each, there was the evaluating human factor which might often become a noticeable variable.

The bases of the success of Chino seems to be shown most luminously in the orientation of the men. A tour of its 2600 acre ranch in a truck was given to the men who wished to see the place. The various departments were visited; in each a supervisor explained the opportunities for learning a trade: welding, machine shop, cabinet shop or plumbing. They also saw the vocational opportunities in plastering, bricklaying and tilesetting as an outlook on a new life. Then these men were advised of their responsibilities. Since they were only a few who were chosen because of their good record, from San Quentin's 5000 men, the responsibility for their conduct and custody clearly rested on them. They were told that between them and their limited freedom there was only a wire fence. The chance to escape was there. Their future required each of them to decide for themselves. But once a fellow sought the outside of the fence, as the more promising, he became a fugitive, guilty of felony and subject to all its consequences.

The superintendent was violently opposed to "squealers"; he did not want any one to squeal upon a companion who was planning to escape. But he felt that every one of them ought to help the others, if he could, to prevent a man from trying to escape. In a moment of discouragement, a man might choose to escape, only to regret it later. He might easily have been persuaded by his companion to stay by showing him the futility of his decision. The psychological subtlety of the superintendent's approach was as commendable as it was sound.

Six months after the Chino experiment began, its Advisory Council was formed. The men selected ten representatives to serve for six months. The Council meets with the Superintendent once a week to discuss problems of morale and welfare. It has functioned successfully for nine years. It helps to plan and organize athletic events, field days, swimming meets and recreational programs. Special committees organ-

ize the men for bridge, checkers, chess and other tournaments in each dormitory. Other committees aid in selecting films, radio programs and other recreational activities. The positive attitudes which develop these unique situations are often a matter of great surprise.

The dominant concept of prison management has for generations been an exhaustively prescribed disciplinary program. "The men are told when to go to bed, when to get up and what to do next."⁶ It is a discipline based upon distrust. Personal discretion is supplanted by minute authoritative dictation. At Chino, there are no guards to spy upon the activities of the men. The attitude of the supervisors was one of trust. In the prevailing atmosphere of freedom, experience showed that 90% of the men assumed the responsibility which was expected of them. With a goodly number, a personal interview was sufficient to produce the desired results. During the first year, when the population was small, fourteen undesirable men were sent back to San Quentin. A few others were sent back at their own request. As Scudder says there were "some men who just couldn't get along with other people."

The initial policy of Chino was to get along without a lock-up. When one became necessary, arrangements were made to use the jail of a nearby town. Most of those who were accorded the jail treatment didn't like the jail; nor did they like the jail food. These offenders were required to pay a dollar a day of their own money for their jail accommodations. This treatment seemed to aid the offenders in adjusting themselves to the restraints imposed upon them by their Chino opportunities. These offenders had a choice, upon request, to be sent back to San Quentin. When faced with the choice, they preferred to assume the responsibility of a socialized behavior at Chino. Not infrequently a prison companion would vouch for the good conduct of an offender. Since the jail was not a popular place with the men, the Superintendent didn't have a chance to use it often. Moreover, later, the Attorney General ruled that such a commitment was in violation of law. One is deeply impressed by the success of the jail when one realizes in most prisons, inmates who are confined for misconduct are supposed to have their spirit broken by thirty days on bread and water. The confirming testimony of Shaw is:⁷ "If people are fit to live, let them live under decent human conditions."

When the local jail ceased to be available, Chino made a few of its cells accessible for segregation. The length of a man's occupancy de-

⁶ *Id.* at 78.

⁷ SHAW, *op. cit.* *supra* note 4, at 55.

pended entirely upon him. Usually a man's confinement did not exceed twenty-four hours. Often he would ask for the disciplinary officer within a lesser time; and sometimes he was returned to his cell shortly thereafter. But he was required to work additional time to make up for the time he lost by his own enforced idleness. The finely human reactions of the Chino men, when their cells were searched, disclosed the value of psychological insights as a rehabilitating force. The old time tough methods of the once-admired, hard-hearted supervisor have all too often been demonstrated to be self-defeating. Scudder's faith seems well placed in believing that penal starvation never improved the attitude of a man of spirit and self-respect. Nor has contemptuous language ever developed anything more than mutual hatred. It is the invariable approach of the vindictive bully, even though he may be a prison supervisor. Any frank method which develops a critical self-analysis has tremendous psychological possibilities. A man of superior ability may lack an emotional equilibrium; but his potential resources may greatly outweigh his defects. His need is an emotional stabilizer.

The spiritual power of a personality has seldom, if ever, been more finally exemplified than when Scudder attended a football game at San Quentin,⁸ two years after he took his first group of men to Chino. He reported at the Captain's desk to get permission to attend. Much to his disappointment, he was assigned a guard, with a billy club, to protect him. Against the guard's wishes, he sat in the bleachers with the prisoners. When some of the delinquent men, who had been returned to San Quentin from Chino, saw him, they hastened over to chat with him. They pointed out to him some of the other men in the bleachers who had been former residents at Chino. One of these delinquents was so appreciative of Chino that he recommended his cellmate as a candidate for transfer there. Indeed, he went to get him to introduce him to the Chino Superintendent. Either as escape risks or for disciplinary reasons, thirty-one men had been sent back to San Quentin. Before Scudder left the yard that afternoon, he met and talked with several of that delinquent coterie. Often he was stopped by other men who made inquiries about Chino. But it was a joy to him to know that his friends, whom he knew at Chino and who had been returned to San Quentin, were "Without Malice".

How did Chino feed its men? If they raised rabbits,⁹ which they did, it took 380 for one meal. But rabbits multiply rapidly. Indeed, so

⁸ SEAW, *op. cit.* *supra* note 5, at 92.

⁹ *Id.* at 97.

rapidly that 1500 rabbits would provide the men with fried rabbit every ten days! With 1100 acres of grazing land, the cattle business seemed to be the most promising in the light of the needs of state institutions for meat and milk. With advice of the California College of Agriculture a slaughter-house, a piggery, and chicken and dairy units were scientifically located and built. Sheds were provided for farm equipment. Chino expanded under the provocative desire of the administration to make Chino self-supporting. Today almost everything the men eat comes from the farm. The men raise vegetables throughout the year. The cannery preserves their twenty acres of peaches, apricots and plums. The men in the dairy class, under the supervision of an instructor, care for their herd. One hundred fifty cows provide milk for two public institutions, as well as for their own needs. How well Chino has fulfilled its purpose is vouched for by the beef, pork, mutton, chickens and rabbits received by 1200 patients in other California institutions, when no meat was otherwise available. Through the State Purchasing Department, Chino fulfilled their dire need. In addition, it was able to develop expert help for the cattle ranches as well as men skilled in the practice of processing meat. Today, industry absorbs these men at good wages. A skilled boy operator was hired at eighty dollars a week. Who shall say that these activities do not signify an opportunity for well-adjusted men?

During the war, the Army gave the cannery an order for four car-loads of beef stew and corned-beef hash for the boys in the Pacific. Thirty men boned a thousand pounds of meat a day! They were willing to work overtime. There were no knife fights! The inspector from the War Production Board was greatly impressed with the efficiency of the staff which Chino hired. Then he learned that the only employee was an instructor. What? "Convicts with those knives?" No. He was informed that they were merely inmates of the institution. On one occasion, when troops were about to embark from Los Angeles, some one had forgotten about loading their rations. The Quartermasters Depot was only forty miles away. The loading had to be done that night. Fifty men were needed; fifty men from Chino volunteered to do the job. They worked all night loading freight, although they had worked all day at the ranch. Other contingents of fifty men each worked on the following nights. So efficient were they that the Army built barracks for 200 men. For twenty-three months, the camp operated at top speed. The four man crew broke all records for loading and unloading freight cars. A similar camp was established at Yermo, a hun-

dred miles from Chino. During the operation of these camps, 777 different men worked in them. Of this group only thirteen escaped; all of them were subsequently captured. When one considers the creative and constructive power of intelligent, sympathetic prison management, these conspicuous experiments, whether regarded from their economic or social impacts, are quite as amazing as they were fruitful. Through these humanistic approaches, modern penology becomes transformed from an airy theoretical abstraction into an expansive reality.

The heroic fire fighting episodes of these men in forestry¹⁰ camps of California merely confirm the astonishing performance of Warden Duffy's men from San Quentin. The wages paid to these men, who were sent to work in forestry camps, was fifteen dollars a month. A portion of each man's wages was held until his release on parole. The quality of their heroism was amply demonstrated in their search for an army plane which had crashed on the mountain slope; twelve persons were aboard. At noon on the second day, they spotted the plane ten miles from their camp. Their clothes were torn in crawling through the underbrush. Ill-equipped, they bound their feet with the sacks they had used to carry their rations. Handicapped by snow and ice, with limited rations and without sleep for thirty-six hours, they located the plane, a heap of rubble. The groan of the two survivors had attracted their attention. Two hours later the sheriff's posse began to cut the trail from the nearest road. The men carried out the victims of the crash—first the living and then the dead. Three of the men were given loaded shotguns. They were charged, by an army officer, to guard the plane and its valuable contents. The army officer received a bit of a shock when he was advised by the supervisor, who was late in arriving on the scene, that his boys were not permitted to carry guns. To the men, who surrendered the shotguns, the situation did seem touched with humor.

The spiritual side of prison life has probably been regarded by most people as a non-existent entity. Strained family relations may have been created by their segregation. Family affiliations have always been an infiltrating and intangible force which it is easy to discern but difficult to control. The success of a prison warden would seem to depend largely upon a personality sufficiently sensitized to the enduring influence of family affection, yet critical enough to realize how to keep it within its socializing limits. From eleven o'clock to three on Sunday,¹¹

¹⁰ *Id.* at 119.

¹¹ *Id.* at 156.

men with good records are permitted to have their families visit them. The entire family may picnic at the tables, on the lawn, under the pergola. On arriving, the visitor's name and food baskets are checked. By a public address system, the man who has a visiting guest or guests, is requested to come to the visiting room to meet them. Many times 900 approved guests have come to Chino on a single Sunday. These occasions reveal the influence of family solidarity and the stabilizing tendencies such an attachment may have upon a man. The permeating power of environment is readily sensed. The visitor receives a realistic perspective. As one wife said, "This is so different from what I expected to find, I just can't believe it."

A violation of the rules by a visitor entails a loss of Sunday privileges. In 1951, some visitors sold marijuana. The infraction required the transfer of twenty-five men to San Quentin before the matter was solved and visiting privileges were restored. About a hundred men had regular visitors. Of course, an experiment always involves possible hazards. During the war, when butter was scarce, a boy who had worked in the kitchen gave his parents a two pound roll of butter. On a tip, the auto was searched and the butter was recovered. The boy temporarily forfeited his visitor's privileges. The justice of peace assessed costs of \$20 a pound upon the father for accepting the tainted gift.

What is the escape record of Chino where the men are not under the restraint of armed custodians? Its population during the last nine years was approximately 9000 men.¹² There were 290 men who had escaped. In the first four years of its operations, due to the method selection, 4.16% of a group of 600 escaped. One half of them escaped during the first thirty days. Thereafter by placing their recruits under custody from thirty to sixty days, the escapes were reduced to two per cent. However, crews still work even on foggy days. Homesickness and family problems are largely responsible for most escapes. One who escapes cannot return to Chino; yet his apprehension is almost inevitable. It means normally that two years will be added to his sentence.

The service of most of the men inspires faith. There was an aircraft warning post in the pasture about a quarter of a mile from the administration building. During the war, twelve men volunteered to watch around the clock, in groups of two. Each had four hours of service in addition to their regular eight hour work schedule. These men were

¹² *Id.* at 214.

trained in identifying aircraft. They achieved an outstanding record of 95.15%. Of the 250 men who served at this observation post, only one betrayed his trust. He escaped; but he was recaptured and transferred to Folsom Prison. On the other hand, Chino had the comforting and contrasting tale of two riders of the herd. They were locked out one night and had to raise a rumpus at the gate in order to get back in. Of the 290 who have escaped from Chino, all but ten were recaptured. For those ten, the relentless search still persists.

The symbol of the spirit of the new order of prison management is best observed in their recreational powers. It is there that the spirit of good sportsmanship is stimulated¹³ in a variety of ways. The day that the soldiers, stationed at Camp Hahn, came to Chino to play football was a memorable day. Somewhat to their surprise, Chino held the Army at the end of the first half to a score of 0 to 0. The various intramural competitions at San Quentin range from croquet to volley ball. In recreational activity, the Labor Parade seems to have taxed the ingenuity of the men. In the rodeo on Independence Day, the top cowhand of the ranch was the outstanding rider and roper. Prominent cattlemen of the Valley were the judges.

How constructive the supervision at Chino is finds abundant illustration in the Men's Council. It was invited to hold its short business meeting at the Superintendent's home. Three of the twelve men were in for murder. Even a lifer may be eligible for parole in California in seven and one-half years. To the men, the unexpected trust demonstrated by the gracious invitation of enjoying the Superintendent's hospitality was disquieting. Still the memory of that thoughtful consideration lingered long; it has often brightened the years of their subsequent release. The opportunity of the eager men to take courses in radio, television and diesel engines is made available to those who desire the training.

Six per cent of the men paroled from Chino commit new felonies and are re-committed. The resourcefulness of the new administration at Chino is easily alerted to new and unique devices in exposing the neglected problems. There are numerous social handicaps which an inmate encounters in the initial stages of his parole. Within thirty days of their release they are assigned to special quarters. Civilian clothing is given to each of them. If it does not fit, it is tailored so it does fit. Evening classes on pre-parole training are held; the sheriff, the police and members of the parole departments are invited to speak. These

¹³ *Id.* at 220.

affairs take on the complexion of a discussion group. To illustrate: one evening a plain clothes man, "a dick" from police force of Long Beach was there. Here is the question asked by one of the men:

"Lieutenant, I have been told that you fellows hound men on parole and a guy doesn't have a chance."¹⁴

"I don't doubt that that has been done." But the lieutenant added: "Years ago it used to be a common practice and still is, I guess, in some cities; but our officers are really interested in you men on parole and want to help you."

One needs little imagination to realize that the outmoded prison discipline in our various states is due to the inadequacies of the police and the parole supervisors, who are political appointees. They have an obstructive, if not a nullifying, influence in the current struggle to attain the social objectives of modern penology. As a result of these meetings, despite the fact that the word of the officer in court is often the controlling word, one man said "I didn't know an officer could be so decent."

A British prison official within recent months is said to have asked the Government to repeal the Flogging Act of 1948, which abolished whipping for crimes of violence. The Lord Chief Justice has been reported by the press to favor its repeal, in order to have some youthful culprits "well-whipped." Shaw thought that whipping treatment suggests "the civilization of fiends rather than human beings." Even the memory of the work of John Howard¹⁵ would seem much too vivid to return to an archaic culture pattern which has persisted largely because of "inertia, ignorance and fear." In the United States, the story of Delaware's whipping post¹⁶ is much too obsolete to make brutality sufficiently palatable to be popular, in the light of Hitler's and Stalin's vicious punitive practices. In a modern culture, to indulge these sinister practices by public servants would seem to approach the depths of infamy. To realize the degree of degradation it denotes, one need only to be reminded of the revolting cruelty of India's early practice. The criminal was stripped of all clothing and made to stand in the sun, with thousands of red ants crawling over his body.¹⁷

The recent riots by rebellious prisoners in Michigan, New Jersey and Massachusetts were doubtless long overdue. The victory of the

¹⁴ *Id.* at 263.

¹⁵ 1726-1790.

¹⁶ CALDWELL, *THE RED HANNAH: DELAWARE'S WHIPPING POST* (1947), reviewed in 35 *CORNELL L.Q.* 935 (1950).

¹⁷ BARONTE, *TWILIGHT IN INDIA* 163 (1949).

Michigan rioters won them an eleven point reform program in prison management. Within the past year there have been twenty major riots in the United States. Twelve of them occurred in five states.¹⁸ In New Jersey, there were four. The exposé of the primitive conditions in the 147 year old Massachusetts Penitentiary were as depressing as they were distressing. Even the Governor characterized the institution as "a Bastille that eclipses in infamy any current prison in the United States." As early as 1828 it was called "obsolete"; in 1875 it was condemned. Its physical facilities were declared "unfit for human habitation," "a tomb for living men" and certainly "mediaeval". In New Jersey, one-third of their prisoners were locked in their cells their entire time, excepting at meal time. They lived in idleness due to lack of equipment for work. Some of the cells, in which the men idled away the lagging hours, were constructed in 1838, a quarter of a century before the Civil War. However these criticisms are said usually to have come "from penologists and state officials". Who could possibly have any greater interest in the problem than they? Probably the state officials were not those whose political influence could have remedied the situation. One can at least hope that Chino and kindred experiments in penology may be rapidly multiplied. Even Shaw, the skeptic, has commended¹⁹ "the remarkable series of experiments now being made in America."

Men in prison, who are sensitized to cherish small pets²⁰ as the most convenient "outlet of their affections," would seem to be a promising, potential spiritual asset. Probably, the fundamental basis of the success of Scudder's experiment was his conception of fair dealing and humane treatment. He rehabilitated his men by re-establishing for them a hopeful outlook. To stimulate the interests of a maladjusted man, he is provided ample opportunities for self-expression. To restore to a man his self-respect, by developing his economic independence through vocational skill, is a social achievement. To return to society an inmate, who has lived in a group accustomed to co-operative activity, requires not only a professional knowledge of penology, but also a humble and resourceful personality. Scudder had the great power and the glorious gift, with which faith may endow a man.

¹⁸ See Chart in *The N.Y. Times* Jan. 25, 1953, § 4, p. 4, col. 3.

¹⁹ SHAW, *op. cit. supra* note 4, at 84.

²⁰ SHAW, *op. cit. supra* note 5, at 217.